

David E. Kenney, Esq.

KENNEY & KROPPF
LAWYERS
8337 Telegraph Road, Suite 200
Pico Rivera, California 90600
Telephone (562) 928-2300

James B. Kropff, Esq.

October 1, 2019

Via UPS Overnight #
IZD469TH0192135838
& Via CommAsst@fppc.ca.gov

Via UPS Overnight #
IZD5TN380103587830
& Via CommAsst@fppc.ca.gov

Fair Political Practices Commission
c/o Mr. Richard C. Miadich, Chair
1102 Q Street, Suite 3000
Sacramento, CA 95811

Ms. Galena West
Chief, Enforcement Division
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Re: FPPC Case No. 19/969 and COM-09112019-01765
Todd Gloria & Todd Gloria for Assembly 2020
November 21, 2019 FPPC Agenda Item

Dear Commissioners and Enforcement Division Chief:

I represent Mat Wahlstrom, who filed a sworn complaint alleging multiple violations of the Political Reform Act (PRA) in matter no. COM-09112019-01765 against Assemblymember Todd Gloria. By letter dated September 24, 2019, Chief of Enforcement Galena West notified my client that parts of his complaint have been incorporated into existing FPPC case no. 2019-00969, that a small portion was deemed to lack foundation, and that the remainder had not yet received a determination. Case no. 2019-00969 arises from a self-reported violation by Mr. Gloria and is discussed in the Chief of Enforcement's executive staff report for the upcoming meeting on November 21, 2019. My client objects to the proposed resolution of case no. 2019-00969.

In San Diego, Mr. Gloria has been openly campaigning for Mayor of San Diego since December 2018. However, he formed his Todd Gloria for Assembly 2020 committee in March 2019, transferred more than \$293,000 from his Assembly 2018 committee to his Assembly 2020 committee, and accepted more than \$25,000 in contributions to his Assembly 2020 committee. The problem is that he had not filed his Form 501 to run for re-election to the Assembly in 2020. When this fact was reported in a local San Diego newspaper, Mr. Gloria denied that he was running for Assembly and affirmed that he was running only for Mayor. Amid mounting public scrutiny, he filed his Form 501 for re-election to the Assembly in 2020 on August 13, 2019 – under penalty of perjury – but simultaneously issued a public statement that he was running for Mayor and was not running for re-election to the Assembly.

Kenney & Kropff

FPPC

November 18, 2019

Page 2 of 4

The reason Mr. Gloria created his Assembly 2020 committee despite having no intention to run for re-election to the Assembly – and despite filing Form 501 under penalty of perjury to the contrary – is to launder money raised in connection with his Assembly office into his Mayoral campaign. The City of San Diego limits the amount of contributions to \$1,150 per election cycle and limits the source of contributions to natural persons and political parties. For his phony Assembly re-election, however, Mr. Gloria enjoys contribution limits that are more than four times higher and can accept corporate donations. Mr. Gloria may now launder his Assembly monies into the San Diego County Democratic Party to spend on his behalf in the Mayoral race, which includes a donation in excess of \$25,000 directly to his Mayoral committee and party expenditure for his benefit.

The foregoing accusations are substantiated by the evidence that my client previously submitted to the FPPC when he submitted his sworn complaint. The executive staff report indicates that Ms. West will be imposing a paltry fine of \$200 on Mr. Gloria as part of the FPPC's streamlined penalty process. My client believes that this result is improper and illegal for multiple reasons.

First, there is no statutory authority for the streamlined program. FPPC Regulation 18360.1 authorizes the Chief of Enforcement to include or exclude any filer from the streamlined program. However, the PRA does not authorize this delegation of authority. The Legislature has authorized the FPPC to delegate authority to the Chair and to the Executive Director. Gov't Code § 83108. As a public agency with a special and limited jurisdiction, the FPPC has only those express (or necessarily implied) powers which are specifically granted to it by statute. *See, e.g., City of Ceres v. City of Modesto*, 274 Cal. App. 2D 545, 550 (1969). The authority for the FPPC to delegate an enforcement decision to the Chief of Enforcement does not exist.

Second, even if such authority existed and Regulation 18360.1 were valid, Mr. Gloria's belated filing of Form 501 declaring his candidacy for an office that he has never intended to occupy does fall under multiple exceptions to the process for streamlined treatment. The late filing is excluded by sub-section (c)(2)(B)(i) because there is evidence that Mr. Gloria, who has run for elected office multiple times and is thoroughly familiar with the rules, intended to conceal his fundraising for Mayor by abusing his Assembly 2020 campaign and intended to violate the PRA in the process; up until the day he filed his Form 501 and every moment since, he has denied that he is a candidate for re-election to that office. The late filing is also excluded by sub-section (c)(2)(B)(vii) because laundering any amount of money, or even attempting to do so, causes serious public harm and erodes the public's confidence in the integrity of the electoral process. The late filing is further excluded by sub-section (c)(2)(B)(viii) because Mr. Gloria remains under investigation for other aspects of my client's sworn complaint, as confirmed by Ms. West's letter dated September 24. At a minimum the matter should be put into abeyance until his Assembly 2020 committee and his Mayoral committee issue their next campaign-

Kenney & Kropff

FPPC

November 18, 2019

Page 3 of 4

finance reports so that you can follow the money and see exactly how badly he has abused the system.¹

Third, even if Mr. Gloria arguably qualified for streamlined treatment under Regulation 18360.1, he is not being properly punished under Regulation 18360.2 with a meager penalty of \$200. His Assembly 2020 committee received nearly \$320,000 during the first half of 2019, and only Mr. Gloria knows how much he raised prior to the day he filed his Form 501 on August 13, 2019. Yet the worksheet showing how the penalty was calculated does not include the 1% of contributions required by the Regulation. Because the PRA defines “contributions” to include transfers from a candidate's own committee, the fine should include at least \$3,200 on top of the \$200 penalty. Under no circumstances should the fine be less than \$3,400, and you should be waiting until after his Assembly 2020 reports its contributions through August 13, 2019, in order to know the full amount of contributions that should be subject to the additional 1% penalty.

In closing, I urge you to carefully consider the propriety of allowing Mr. Gloria to be slapped on the wrist when the evidence clearly establishes a premeditated plan to launder money from his state-office committee into his local-office committee. Doing so would violate the PRA and your own regulations.

Perhaps more importantly, I urge you to consider how the public will perceive the fine imposed on Mr. Gloria for such egregious conduct. The press has already written multiple articles critical of the FPPC's minimization of Mr. Gloria's fraud on the public.² The fact that Mr. Gloria's attorney in the matter, Gary Winuk, is the FPPC's former enforcement chief fuels the public's perception that the FPPC is primarily an incumbent-protection racket rather than an agency charged with protecting the integrity of the electoral system.

¹ The worksheet showing how the \$200 penalty was calculated is very disturbing. For example, it fails to recognize that Mr. Gloria has a high level of experience and sophistication on election matters, contrary to sub-section (c)(2)(A)(i); only “self-reported” after his violations were detailed by the press, contrary to sub-section (c)(2)(A)(ii); has caused major public harm by creating a scheme to launder excessive, corporate donations into a campaign that prohibits both, contrary to sub-section (c)(2)(A)(iii); received nearly \$320,000 into this Assembly 2020 committee before filing Form 501, contrary to sub-section (c)(2)(A)(iv); and the Form 501 is related to the re-election that triggered the filing obligation, contrary to sub-section (c)(2)(A)(xiv). None of those factors is mentioned in the worksheet.

² See, e.g., <https://californiaglobe.com/section-2/assemblyman-todd-gloria-gets-stern-finger-wag-from-fppc-on-campaign-violations/>; and <https://www.ocregister.com/2019/11/17/does-the-fppc-help-voters-or-those-in-power-susan-shelley/>.

Kenney & Kropff
FPPC
November 18, 2019
Page 4 of 4

For these reasons, I encourage the FPPC to reject the proposed \$200 fine against Mr. Gloria, to conduct a thorough investigation of all the pending allegations against him (which means waiting until all relevant campaign-finance reports are available to the public), and then to take action that fully recognizes the gravity of the scam that Mr. Gloria was perpetrating against the public.

Sincerely,



David E. Kenney, Esq.